

First, neither Phaal nor Lo suggests the desirability of modifying or combining the two references to produce the claimed invention. Claim 7 recites a method for “adaptively altering a fraction of” the packets for selection and for altering the fraction “in response to” a length of a queue that maintains the selected packets. The Office Action admits that Phaal neither teaches nor suggests a “feedback element for adaptively altering a fraction of packets for review that is in response to a length of a queue of selected packets” (Office Action, page 3). However, Applicants respectfully disagree with the contention that it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the buffers of Phaal with “the queue 110 and queue control 112 of Lo” (Office Action, page 4).

Lo neither teaches nor suggests a feedback element that adaptively alters in response to a length of a queue. Instead, Lo describes a queue (or FIFO) 110 that “stores up to N number of sampling intervals” (Lo, col. 10, lines 24-25) and is controlled by queue controller 112 (Lo, col. 10, line 24). When each of these stored sampling intervals expires, a sampling signal is asserted (Lo, col. 10, lines 27-33). This sampling signal controls retransmission of a data packet to a management unit. In particular, when the sampling signal is asserted, the repeater sends the data packet to the management unit. Otherwise, the repeater transmits a disrupted packet to the management, where the disrupted packet is discarded (Lo, col. 5, lines 31-37). The sampling of data packets as disclosed in Lo does not involve the length of the queue (or FIFO) 110 and does not alter adaptively.

Moreover, the proposed modification to Phaal in the Office Action changes the principle of operation of Phaal. Specifically, the Office Action proposes replacing “the receive and transmit FIFO buffers 25 and 26 of Phaal with the queue 110 and queue

control 112 of Lo” (Office Action, page 4). The FIFO buffer 25 in Phaal stores packet headers (Phaal, col. 5, lines 13-16), and the FIFO buffer 26 stores an assembled data packet (Phaal, col. 5, lines 47-48). On the other hand, the queue (or FIFO) 110 stores sampling intervals (Lo, col. 10, lines 24-25) and is controlled by the queue control 112 (Lo, col. 10, lines 21-22). Thus, the suggested modification would require a substantial reconstruction and redesign of the elements shown in Phaal.

Second, the combination of Phaal and Lo fails to teach all the claimed limitations. As discussed above and as noted by the Examiner, both Phaal and Lo fail to suggest or teach the following elements of claim 7:

“said steps for adaptively altering a fraction of said packets for selection include steps for

maintaining a queue of selected packets; and

altering said fraction in response to a length of said queue.”

The Office Action cites no portion of Phaal or Lo to show the foregoing elements. Thus, the combination of references proposed by the Office Action fails to show every element of the claimed combination.

Based at least on the foregoing reasons, Applicants respectfully submit that the rationale for the rejection of claim 7 under 35 U.S.C. § 103(a) is incomplete and therefore the rejection is improper.

Claims 10 and 25-26 depend either directly or indirectly on claim 7 and thereby include each and every element and limitation of claim 7. Therefore, claims 10 and 25-26 are patentable over Phaal and Lo for at least the same reasons stated above.

Claim 29 is an independent computer-readable medium claim corresponding to the method of claim 7. Claims 31 and 43-44 are dependent claims that depend on claim

29. Claims 29, 31 and 43-44 include the same substantive elements and limitations as in claim 7. Therefore, claims 29, 31 and 43-44 are patentable over Phaal and Lo at least for the reasons indicated above with respect to claim 7.

For at least the foregoing reasons, Applicants respectfully request withdrawal of the rejection of claims 7, 10, 25-26, 29, 31, and 43-44 under 35 U.S.C. § 103(a).

2. Objection to Dependent Claims 9, 11-21, 30, and 32-42

Claims 9, 11-21, 30, and 32-42 are objected to as being dependent upon a rejected base claim. Each of claims 9, 11-21, 30, and 32-42 depend directly or indirectly from claim 7. Therefore, each of claims 9, 11-21, 30, and 32-42 is patentable over Phaal in view of Lo for at least the same reasons set forth above. Therefore, withdrawal of the objection of claims 9, 11-21, 30 and 32-42 is respectfully requested.

3. Summary

In view of the forgoing remarks, Applicants respectfully submit that the allowance of the pending claims 3, 5-7, and 9-44 is appropriate and such action is earnestly solicited.

The Examiner is invited to telephone the undersigned at (408) 414-1080 to discuss any issue that may advance prosecution.

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No fee is believed to be due specifically in connection with this Response. To the extent necessary, the Commissioner is authorized to charge any fee that may be due in connection with this Response to our Deposit Account No. 50-1302.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

on Feb 27, 2004
(Date)

by 
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